

The Government of the United Arab Emirates has recently issued Federal Law No. 3 of 2022 regulating commercial agencies ("New Commercial Agency Law" or "New Law"), replacing the current commercial agency law after more than 40 years since its initial enactment i.e., Federal Law 18 of 1981 "(Old Law)".

Repealing the Old Law effective 15 June 2023, the New Commercial Agency Law brings significant legal reforms for commercial agencies, distributors, and principals who will now be able to benefit from a more balanced legal framework and clear rules for their operations. The law provides a much-needed legal update for the foreign principals of commercial agencies operating in the UAE, enabling them to pursue their business goals with greater confidence and security.

This legal briefing shall highlight the salient reforms brought about by the New Law, such as agency contract term, termination & non-renewal of an agency along with changes to the options of dispute resolution.

Overview

The New Commercial Agency Law will come into force on 15 June 2023. Commercial agents, principals and in particular manufacturers who consider appointing an agent/distributor should acquaint themselves with the major changes to benefit from those new regulations.

Who Can Be an Agent?

As under the Old Law, a commercial agency under the New Law includes the agent acting on behalf of the principal for a commission as well as the distributor buying from the principal and selling on its own account in the territory (as well as other forms of agencies).

The New Commercial Agency Law defines a "commercial agent" to include:

1. A natural person who is a UAE national
2. A private or public legal person (i.e., corporate entity)
3. International Companies in certain limited cases and only if allowed by the Cabinet in future.

As with most new legislations, certain provisions of the law anticipate clarification on its procedural and practical execution. To this extent, implementing regulations are anticipated.

Only those private companies ultimately owned by UAE nationals can be commercial agents.

As with public joint stock companies, only those with 51% or more shareholding of UAE nationals can be commercial agents.

Most importantly, international companies subject to the Cabinets approval and further definition of requirements, can in future, become commercial agents of their own business, provided that they:

- Do not already have a commercial agent in the UAE; and
- Are new to the market and did not previously have a registered commercial agency in the market.

Contract Term

If a commercial agent is required to maintain a showroom, shop or maintenance/repair workshop, the commercial agency contract term shall now be for 5 years, unless the agent and principal agree otherwise.

Termination

The New Commercial Agency Law allows for 2 additional modes of terminating the agency contract:

1. upon expiry of the contract term, provided it has not been renewed by the parties,
2. upon unilateral termination by either party as per the conditions stipulated in the agency contract.

In addition, existing goods, spare parts, machines, etc. must be taken over by the principal or the new agent at fair value after the agency has ended.

Notably, termination due to gross misconduct by the agent is no longer regulated.

Non-Renewal / Termination Notice Period

In case of non-renewal of a limited term agency contract, principals must pay attention to the notice periods provided for by the New Commercial Agency Law.

The party not wishing to renew the contract must notify the other party of the non-renewal one year before the expiry of the term or before the lapse of one half of the contract term, whichever period is shorter, unless the parties agree otherwise.

In case a party wishes to terminate the commercial agency contract prior to the end of its term in accordance with the agency contract, it must serve a notice not less than:

1. one year prior to the agency contract's term expiry or
2. prior to the lapse of half of the stated contract agency term

whichever of (1) and (2) is shorter.

In general, the agent will be entitled to claim compensation from the principal for the damages that occurred as a result of the expiration or termination. In case of an expiration at the end of the contract term, this compensation can contractually be excluded.

Dispute Resolution

As per the New Commercial Agency Law, the Commercial Agency Committee has the exclusive jurisdiction to hear disputes among parties to the commercial agency contract within 120 days from the date of recording the case with the Committee.

Failure to reach a decision within the stipulated timeframe allows the parties to proceed to the UAE Courts.

A significant reform brought about by the law is in allowing parties to resort to arbitration to resolve their disputes, which was previously not possible under the Old Law.

Additionally, while in dispute, the New Commercial Agency Law allows the principal, subject to the release of a separate ministerial decision in this regard, to sell its products through

exclusive sources other than the agent on a temporary basis.

Exclusion of Application

It is pertinent to note that the provisions concerning early termination and expiration of commercial agency contracts shall not be applicable to a commercial agency contract that has been in force at the time of issuance of the New Commercial Agency Law, i.e., on 13 December 2022. To those agencies, the regulations on early termination and expiration apply after the lapse of two years from the date of entry into force of the New Law, i.e., 15 June 2023.

As an exception, those regulations are only applicable after the lapse of ten years from the date of entry into force of the New Law for those companies that have either been registered for the same agent for more than ten years or for commercial agencies in which the volume of the agent's investment exceeds one hundred million dirhams (AED 100,000,000).

Conclusion

As observed, the New Commercial Agency Law, albeit a significant modernization of the Old Law, remains applicable as public policy. Nevertheless, the above-mentioned innovations provide the foreign principals with entirely new opportunities when used in accordance with the New Law. New agency and distribution contracts should be drafted to reflect these opportunities and establish a well-balanced relation between the agent and the principal as opposed to agencies which have been subject to the Old Law.

*The **dedicated UAE team at SCHLÜTER GRAF** can gladly assist you in connection with any of the above-mentioned topics and considerations for which businesses must make wise decisions relating to commercial agencies and any other matters relating to UAE commercial agency contracts.*

SCHLÜTER GRAF Legal Consultants

ONE by Omnyat, Office P501, Business Bay, P.O. Box 29337
Dubai / United Arab Emirates
Tel: +971 / 4 / 431 3060
Fax: +971 / 4 / 431 3050

Anja Christine Adam, Legal Consultant (Dubai), Partner (Hamburg Office)
a.adam@schlueter-law.de

SCHLÜTER Rechtsanwälte PartG mbB

Dorotheenstr. 54,
22301 Hamburg
Tel: 040 / 380 755 75
Fax: 040 / 380 756 86